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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/835,564	04/17/2001	Ikuo Kawauchi	003510-092	5901	
7590 07/30/2003 Platon N. Mandros BURNS, DOANE, SWECKER & MATHIS, L.L.P. P.O. Box 1404			EXAMINER		
			WALKE, AMANDA C		
Alexandria, VA	22313-1404		ART UNIT	PAPER NUMBER	
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			DATE MAILED: 07/30/2003	,	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Office Action Summary Application No. G9/835,564 KAWAUCHI, KUO Examiner Amanda C Walke 1752 A SHORTENED STATUTORY PERIOD FOR REDY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE of this c munication appears on the c ver sheet with the correspondence address Period for Regly A SHORTENED STATUTORY PERIOD FOR REDY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time rary is a reliable under the pressure of 3 CFR 1.136g.). In an event, however, may a regly to limity field set each size Kip (Month's bean the range date of this communication). Figure 1 and provided barder is seen than there is a seen than the propriet of the certification of the provision of the set of the communication. Failure to region within the sate or extended period for regly in 5 yetabule, cares the application to become ABMONCHES (SE) CS. C. 1333. Any rapy meaned by the Office liter bash frees merits after the making date of this communication, even if streetly filed, may reduce any street of the provision of the set of the provision of the set of the provision of the set						AS-7
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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (e) the invention was described in-
- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).
- 2. Claims 11, 12, 15, 16, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Shimazu et al (6,294,311).

Shimazu et al disclose a lithographic printing plate having high chemical resisitance comprising a substrate, an underlayer, and a top layer. The alkaline soluble underlayer comprises a combination of polymeric materials and infrared absorbing materials (photothermal conversion materials). Preferably the infrared absorbing materials are dyes or pigments such as carbon black (column 3, lines 41-51, column 4, line 24 to column 6, line 12, and column 6, line 25- column 7, line 9). The preferred infrared absorbing material is a dye used in the examples, and is the same as the presently claimed dye (1). A preferred solvent for use in the material is a mixture of methanol/dioxolane/methyl lactate (43:43:14) wherein the only high boiling point solvent (as defined by the present invention) is the methyl lactate, which comprises only 14 % by wt of the solvent mixture (and is used in the examples of the reference). The underlayer is formed by coating the layer onto the substrate then drying it. The plate if the reference is preferably a positive-working plate (column 15, lines 25-30). It is the position of the examiner

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that the underlayer meets the limitations for the presently claimed photosensitive layer until the "top layer" is added, thus the substrate coated with only the under layer is an isolated intermediate product and is still a precursor to a printing plate,

With respect to the "dissolved or dispersed...200 ° C" in claims 11 and 12, this is a product by process limitation. The product consists of a printing plate precursor comprising a photosensitive layer which contains a cyanine dye and a polymer insoluble in water and soluble in aqueous alkali solution, not what the solvent system consisted of during the process of making the product. M.P.E.P. § 2113:

3. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985)... "The Patent Office bears a lesser burden proof in making out a case of *prima facie* obviousness for product-by-process claims because of their peculiar nature" than when a product is claimed in the conventional fashion. *In re Fessman*, 180 USPQ 324, 326 (CCPA 1974). Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983).

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Allowable Subject Matter

4. The following is a statement of reasons for the indication of allowable subject matter: Claims 13, 14, 18, and 19 are indicated as containing allowable subject matter. The prior art of record fails to teach or suggest to one of ordinary skill in the art to prepare a positive-type planographic printing plate described by the present claims 13 or 18 (14 and 19 are dependent upon them) wherein of the residual solvent in contained in the photosensitive layer, 50% by weight or more of the solvent consists of solvent having a boiling point lower than 100 degrees C.

Response to Arguments

5. Applicant's arguments filed 5/12/2003 have been fully considered but they are not persuasive.

Applicant argued that the references failed to teach that the Shimazu et al reference fails to teach a photosensitive top layer. As explained above, it is the position of the examiner that the underlayer meets the limitations for the presently claimed photosensitive layer until the "top layer" is added, thus the substrate coated with only the under layer is an isolated intermediate product and is still a precursor to a printing plate,

Applicant's arguments with respect to the Lewis et al reference were persuasive, and it was determined that the reference did not read obviate the newly presented claims.

In light of applicant's amendments the specification objections and the 35 USC 112 rejections are no longer pertinent.

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Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda C Walke whose telephone number is 703-305-0407. The examiner can normally be reached on M-R 5:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Baxter can be reached on 703-308-2303. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

imanda C

Examiner Art Unit 1752

ACW July 28, 2003

JANET BAXTER

SUPERVISORY PATENT EXAMINER TECHNOLOGY CENTER 1700